MEMORANDUM

SUBJECT: Inadvertent Errors in the Final Rule, Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities (Tier 1, SAN 5210, RIN 2040-AE95) - Correction of Inadvertent Errors

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TO: Gina McCarthy
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There were several inadvertent errors made in the process of preparing the signature package for a final rule under Clean Water Act section 316(b) entitled Final Regulation to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities. The rule was signed on May 19, 2014. This memo identifies these errors and shows the corrected text. These corrections are described below.[1]

● Exhibit I-4 on page 44 is amended to make the changes shown below because the examples provided are incorrect and at odds with the regulatory text. The table identifies as examples of new units at an existing facility units that are not new units as defined in the regulatory text at § 125.92(u). The regulatory text defines a "new unit" as, in part, a stand-alone unit, further stating that a "stand-alone *unit* is a separate unit added to a facility for either the same general industrial operation or another operation." The examples provided in the table are incorrect and inconsistent with the regulatory text because they identify as "new units" those units that are not additions to an existing facility but are rather substitutions for existing units at a facility. Similarly, the example provided of an existing unit has been changed in order to clarify that retrofitting of an existing unit with a new boiler or use of a different fuel does not result in conversion of an existing unit to a new unit for consistency with the regulatory text.

[1] Note that the cited page numbers refer to the page in the redline/strikeout version of the preamble and therefore may not correspond to the page on which the error appears on the prepublication copy.

Exhibit I-4. Examples of new and existing units at existing electric generation facilities

Examples of new units at an existing facility	Examples of existing units
A unit that is constructed at a stand-alone location at an existing facility ~~intake structure~~ regardless of any plans to retire any other unit at the facility in the future	A unit retrofitted with ~~where~~ a new boiler or fuel type ~~is employed~~
~~An existing unit is retired and demolished, with a new unit constructed in the former unit's location as a replacement (regardless of the change in generating capacity, the change in cooling water intake flow, or the use of an existing intake structure)~~	A unit that is repowered or undergoes significant modifications

● Exhibit I-5 on page 47 is amended to make the changes below because the examples provided are incorrect and at odds with the regulatory text. These changes parallel those identified above. Exhibit I-5 identifies as examples of new units at an existing facility units that are not new units as defined in the regulatory text at § 125.92(u). The regulatory text defines a "new unit" as, in part, a stand-alone unit, further stating that a "stand-alone *unit* is a separate unit added to a facility for either the same general industrial operation or another operation." The examples provided in the table are incorrect and inconsistent with the regulatory text because they identify as "new units" those units that are not additions to an existing facility but are rather substitutions for existing units at a facility.

Exhibit I-5. Examples of new and existing units at manufacturers

Examples of new units at an existing facility	Examples of existing units at an existing facility
A unit that is constructed at a stand-alone location at an existing facility (either adjacent to existing units or on newly acquired or developed property) regardless of any plans to retire any other unit at the facility in the future	A unit where only the waste heat generating process equipment or the cooling system equipment is replaced
A unit that is constructed adjacent to an existing unit for the same industrial activity (such as expanding the production output by building a second unit as a stand-alone unit next to the existing unit)	A unit where modifications are made to the waste heat generating process equipment or the cooling system (e.g., optimization, repairs, upgrades to operational elements)
~~An existing unit is retired before or after a new unit is constructed as a replacement (regardless of the change in production capacity, the change in~~	Replacement or upgrade of ancillary equipment (e.g., pumps, motors, HVAC, etc.)

~~cooling water intake flow, or the use of an existing intake structure)~~
~~An existing unit is retired and demolished, with a new unit constructed in the former unit's location as a replacement (regardless of the change in production capacity, the change in cooling water intake flow, or the use of an existing intake structure)~~

• Page 161, second sentence in the paragraph that begins on this page is amended by striking the parenthetical phrase "(crustaceans)." The term shellfish is not defined in the rule, and throughout the preamble and rule are examples that clearly show shellfish is not limited to crustaceans. This change corrects an inadvertent error.

> The proposed rule would have required the seasonal deployment of barrier nets on estuaries and oceans as one element of the best technology available for minimizing the impingement mortality of shellfish ~~(crustaceans)~~.

• Page 258, seventh sentence in the paragraph that begins on this page, insert the words "two of" before "these three." Only two compliance options in the regulatory text at § 122.21(r)(6) require a *performance optimization study* . This change corrects an inadvertent error.

> For two of these three options, the permit application element § 122.21(r)(6) further requires a site-specific study for the purposes of technology optimization to minimize impingement mortality…

In order to prevent confusion to the public, we recommend correction of these inadvertent errors.

Gina McCarthy,
Administrator

7/21/14
Date